

REMARKS

This Reply is intended to be completely responsive to the Non-Final Office Action dated October 24, 2008.

Status

Claims 1-3, 8-10, 13-16 and 27-41 are pending in the present application.

Claims 11 and 12 are withdrawn from consideration.

Claims 1-3, 8-10, 13-16 and 27-41 are rejected.

Applicant believes the rejections raised by the Examiner have been addressed, and the Application is in condition for allowance. Favorable reconsideration of the application is respectfully requested.

Claim Rejections – 35 U.S.C. § 102

On pages 2-3 of the Office Action, the Examiner rejected claims 1-3, 13-16, 27-33 and 36-41 as being anticipated by Ferree et al., U.S. Patent No. 7,235,102, under 35 U.S.C. § 102(e).

1. **Effective Filing Date of the Relevant Subject Matter of Ferree et al.**

On page 2 of the Office Action, the Examiner relies on the subject matter of FIGS. 23A-24B and the corresponding description of Ferree et al. to reject the pending claims under 35 U.S.C. § 102(e). Ferree et al. issued from U.S. Application No. 10/434,917 that was filed on May 9, 2003 and claims priority to U.S. Provisional Application No. 60/379,462 filed on May 10, 2002. U.S. Provisional Application Serial No. 60/379,462 does not appear to provide support for the subject matter of FIGS. 23A-24B and/or for the corresponding description because FIGS. 23A-24B and the corresponding description, that are present in Ferree et al., are missing from

U.S. Provisional Application Serial No. 60/379,462. Therefore, the effective filing date of the relevant subject matter of Ferree et al. is the May 9, 2003 filing date of U.S. Application No. 10/434,917.

2. Declaration of Prior Invention

In response to the rejection, Applicant has attached hereto a Declaration of Prior Invention under 37 C.F.R. § 1.131 that establishes invention of the subject matter of claims 1-3, 13-16, 27-33 and 36-41 prior to May 9, 2003, the effective filing date of the relevant subject matter of Ferree et al. In particular, one or more of the embodiments of the invention shown in the drawings of Exhibit A of the Declaration of Prior Invention fall within the scope of claims 1-3, 13-16, 27-33 and 36-41. Further, the Declaration of Prior Invention provides facts in evidence of various steps taken between May 9, 2003 and the filing date of the present application to establish diligence between May 9, 2003 and constructive reduction to practice of the present invention. In view of the Declaration of Prior Invention removing Ferree et al. from consideration with respect to claims 1-3, 13-16, 27-33, and 36-41, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-3, 13-16, 27-33, and 36-41 under 35 U.S.C. 102(e) as anticipated by Ferree et al.

Claim Rejections – U.S.C. § 103(a)

1. Rejection of Claim 8 under 35 U.S.C. § 103(a) as Unpatentable over Ferree et al. in View of Baumgartner

On pages 3-4 of the Office Action, the Examiner rejected dependent claim 8 under 35 U.S.C. § 103(a) as unpatentable over Ferree et al. in view of Baumgartner, U.S. Patent No. 5,370,697. As discussed above, the effective filing date of the relevant subject matter of Ferree et al. is the May 9, 2003 filing date of U.S. Application No. 10/434,917.

In response to the rejection, Applicant has attached hereto a Declaration of Prior Invention under 37 C.F.R. § 1.131 that establishes invention of the subject matter of claim 8 prior

to May 9, 2003, the effective filing date of the relevant subject matter of Ferree et al. In particular, one or more of the embodiments of the invention shown in the drawings of Exhibit A of the Declaration of Prior Invention fall within the scope of claim 8. Further, the Declaration of Prior Invention provides facts in evidence of various steps taken between May 9, 2003 and the filing date of the present application to establish diligence between May 9, 2003 and constructive reduction to practice of the present invention. In view of the Declaration of Prior Invention removing Ferree et al. from consideration with respect to claim 8, Applicant respectfully requests that the Examiner withdraw the rejection of claim 8 under 35 U.S.C. § 103(a) as unpatentable over Ferree et al. in view of Baumgartner.

2. Rejection of Claims 9 and 10 under 35 U.S.C. § 103(a) as Unpatentable over Ferree et al. in View of Baumgartner in View of Parsons et al.

On page 4 of the Office Action, the Examiner rejected dependent claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Ferree et al. in view of Baumgartner in view of Parsons et al., U.S. Patent No. 5,545,229. As discussed above, the effective filing date of the relevant subject matter of Ferree et al. is the May 9, 2003 filing date of U.S. Application No. 10/434,917.

In response to the rejection, Applicant has attached hereto a Declaration of Prior Invention under 37 C.F.R. § 1.131 that establishes invention of the subject matter of claims 9 and 10 prior to May 9, 2003, the effective filing date of the relevant subject matter of Ferree et al. In particular, one or more of the embodiments of the invention shown in the drawings of Exhibit A of the Declaration of Prior Invention fall within the scope of claims 34 and 35. Further, the Declaration of Prior Invention provides facts in evidence of various steps taken between May 9, 2003 and the filing date of the present application to establish diligence between May 9, 2003 and constructive reduction to practice of the present invention. In view of the Declaration of Prior Invention removing Ferree et al. from consideration with respect to claims 9 and 10, Applicant respectfully requests that the Examiner withdraw the rejection of claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Ferree et al. in view of Baumgartner in view of Parsons et al.

3. Rejection of Claims 34 and 35 under 35 U.S.C. § 103(a) as Unpatentable over Fehling et al. in View of Richelsoph in View of Baumgartner

On pages 4-5 of the Office Action, the Examiner rejected dependent claims 34 and 35 under 35 U.S.C. § 103(a) as unpatentable over Fehling et al., U.S. Patent No. 6,770,094, in view of Richelsoph, U.S. Patent No. 7,105,024, in view of Baumgartner. As discussed on pages 11 and 12 of Applicant's response to the Non-Final Office Action dated February 12, 2008, neither Fehling et al. nor Richelsoph disclose, teach, or suggest "at least two appendages removably coupled to the scaffold assembly." As discussed on page 13 of Applicant's response to the Non-Final Office Action dated February 12, 2008, Baumgartner does not remedy the deficiencies of Fehling et al. and Richelsoph. Accordingly, Applicant respectfully asserts that the subject matter recited in claims 34 and 35 would not have been obvious to a person of ordinary skill in the art under 35 U.S.C. § 103(a) because Fehling et al., Richelsoph, and Baumgartner fail to disclose, teach, or suggest "at least two appendages removably coupled to the scaffold assembly," as recited in independent claim 33.

Alternatively, it appears from the Office Action that the Examiner may have intended to reject dependent claims 34 and 35 under 35 U.S.C. § 103(a) as unpatentable over Ferree et al. (not Fehling et al.) in view of Richelsoph, in view of Baumgartner. Assuming that the Examiner intended to reject dependent claims 34 and 35 under 35 U.S.C. § 103(a) as unpatentable over Ferree et al. in view of Richelsoph, in view of Baumgartner, Applicant has attached hereto a Declaration of Prior Invention under 37 C.F.R. § 1.131 that establishes invention of the subject matter of claims 34 and 35 prior to May 9, 2003, the effective filing date of the relevant subject matter of Ferree et al. As discussed above, the effective filing date of the relevant subject matter of Ferree et al. is the May 9, 2003 filing date of U.S. Application No. 10/434,917. Further, claims 34 and 35 of the present application read on one or more of the embodiments of the invention shown in the drawings of Exhibit A of the Declaration of Prior Invention. Further, the Declaration of Prior Invention provides facts in evidence of various steps taken between May 9, 2003 and the filing date of the present application to establish diligence between May 9, 2003

and constructive reduction to practice of the present invention. In view of the Declaration of Prior Invention removing Ferree et al. from consideration with respect to claims 34 and 35, Applicant respectfully requests that the Examiner withdraw the rejection of claims 34 and 35 under 35 U.S.C. § 103(a) as unpatentable over Ferree et al., in view of Richelsofph, in view of Baumgartner.

Conclusion

Claims 1-3, 8-10, 13-16 and 27-41 are pending in the present application. For the reasons discussed above, Applicant believes that the present application is in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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FOLEY & LARDNER LLP
Customer Number: 23524
Telephone: (414) 319-7077
Facsimile: (414) 297-4900

By /James D. Borchardt/

James D. Borchardt
Attorney for Applicant
Registration No. 62,025